IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6550 of 1997
with
SPECIAL CIVIL APPLICATION No 6513 of 1997
with
SPECIAL CIVIL APPLICATION No 5167 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

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BARODA MUNICIPAL CORPORATION

Versus

NAGINBHAI K PATEL

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Appearance:
MR PRANAV G DESAI for Petitioner
MR RD RAVAL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 27/04/2000

C.A.V. JUDGEMENT

All these three petitions are filed by the Baroda Municipal Corporation in respect of the pay-scale granted by the award of the Industrial Tribunal, Vadodara. As common issues are involved, with the consent of the parties, these petitions were taken up for hearing together and are disposed by this common judgment.

2. Special Civil Application No.6513 of 1997 seeks to challenge the order of the Industrial Tribunal in Miscellaneous Application No.20 of 1994 whereby the alleged error in the original award in Reference (IT) No.563 of 1994 was sought to be rectified. Whereas the original award recorded a finding of fact that the workmen concerned were serving as 'supervisors', it ordered the petitioner to grant to the workmen the pay-scale of supervisors with effect from 1.6.1987. These workmen were originally employed and appointed as "asamis" and they had claimed the post of supervisor in the pay-scale of Rs.210-270. During the pendency of the reference, the pay-scales of supervisors were revised to Rs.950-1500 from Rs.260-400. However, as the workmen had originally claimed the pay-scale of Rs.210-270, they were granted by the petitioner the pay-scale of Rs.800-1150. Being aggrieved by such interpretation of the award, the workmen concerned had filed Special Civil Application No.2532 of 1996 and during the pendency of that petition, also approached the Industrial Tribunal with a Miscellaneous Application seeking to rectify the alleged error in the award. The order in the said Miscellaneous Application clarified that the revised pay-scale of Rs.950-1500 was to be paid to the workmen and this order is under challenge before this Court.

3. In the other two Special Civil Applications, the awards made in the cases of two other similar employees, who are granted the pay-scale of Rs.950-1500 in their respective reference cases, are under challenge.

4. All the employees concerned in these cases were originally employed as 'Daily Wagers" in the malaria/ filaria department of the petitioner. They approached the Industrial Tribunal with the case that, although they were not designated as supervisors and employed on daily wage basis, they had continuously served for several years and were discharging the duties of supervisors. The cases have been contested on facts and on the points of law before the Industrial Tribunal and after considering the rival contentions and recording the findings of fact as also considering the economic burden

of arrears, the Industrial Tribunal has ordered the grant of pay-scale of supervisors with effect from 1.6.1987 in case of ten employees in Reference (IT) No.563 of 1984; with effect from 1.1.1986 but actual payment from 1.8.1990 in Reference (IT) No.11 of 1993 and with effect from 1.10.1988 but actual payment from 1.1.1997 in Reference (IT) No.176 of 1996. The pay-scale of Rs.950-1500 was not expressly granted in the first mentioned reference but it is granted by the order in the Miscellaneous Application as noted hereinabove. Thus, all the workmen concerned in these petitions are granted the pay-scale of Rs.950-1500 which was applicable to supervisors.

4.1 It has come on record that besides the employees concerned in these cases, a group of 26 similarly situated employees had directly approached this Court by filing Special Civil Application No.7281 of 1988 wherein a settlement was reached and those employees were granted the pay-scale of Rs.950-1500 with effect from 1.1.1986 and actual payment on the basis of the revised pay-scale from 1.8.1990. In each of the present cases, the Tribunal has recorded a finding of fact that the employees concerned have actually been serving as supervisors and the contention of the petitioner that the aforesaid settlement did not apply to them, has also been considered. Thus, in short, the Tribunal has awarded the pay-scale of Rs.950-1500 to these workmen applying the principle of equal pay for equal work. While deciding the Miscellaneous Application No.20 of 1994 and expressly ordering to grant the pay-scale of Rs.950-1500, the Tribunal took note of the fact that in two other Reference cases viz. References (IT) Nos.48 of 1989 and 63 of 1989, the pay-scale of Rs.950-1500 is granted to the supervisors by the awards made on the same date on which the award was made in Reference (IT) No.563 of 1984. It was, therefore, held that the omission of mentioning the pay-scale in the award of the original Reference (IT) No.563 of 1984 appeared to be only an accidental slip.

5. The learned advocate appearing for the petitioner has reiterated that the compromise arrived at in Special Civil Application No.7281 of 1988 was restricted to the employees concerned in that petition and the pay-scales agreed to in that matter ought not to have been adopted by the Industrial Tribunal. It is submitted that the facts in the present cases were different. The order in Miscellaneous Application No.20 of 1994 is mainly attacked on the ground that the Tribunal had no jurisdiction under the Industrial Disputes (Gujarat)

Rules, 1966 to specify the pay-scale of Rs.950-1500 in the name of rectifying an error or accidental slip. He submitted that even the original demands of the employees and the terms of reference mentioned the pay-scale of Rs.210-270 for the supervisors. When this pay-scale was revised, the appropriate revised pay-scale would have been Rs.800-1150 and the pay-scale of Rs.950-1500 was granted to qualified field workers who were earlier in the pay-scale of Rs.260-400. It is, therefore, submitted that there was a substantial dispute about the pay-scale applicable to the employees concerned which could not have been resolved in an application for rectifying an error in the award.

6. Rule 31 of the Industrial Dispute (Gujarat) Rules, 1966 provides for correction of errors and reads as under:

> "The Labour Court, Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it or he issues."

In the context of this Rule, it has to be seen whether, in fact, any clerical mistake or error arising from an accidental slip or omission had crept into the original award. Going through the award it appears that the original demand for the pay-scale of Rs.210-270 was in the context of that being the prevailing scale for the supervisors. The main controversy was as to whether these employees had actually worked as supervisors and the finding of the Tribunal was that, since a number of years they were actually working as supervisors. They were, therefore, awarded the pay-scale of supervisors with effect from 1.6.1987. However, when it came to implementing the said order, the pay-scales were revised. It was contended on behalf of the employees that the pay-scale prevailing at that time for the supervisors was Rs.950-1500 and the same was granted in two other similar cases in which the awards were made on the same date. In view of these facts and on the basis of the documents produced before the Tribunal, it has arrived at the conclusion that the omission to mention the pay-scales of supervisors in the award appeared to be an accidental slip and hence the order specifying the pay-scale was made. We do not find any jurisdictional error in expressly specifying the pay-scale when the original award did order that the pay-scale of supervisors should be given to the employees concerned.

7. The argument common to all the cases is that the

employees concerned were originally appointed and serving as "asamis" or on other lower posts and even confirmed on such posts in the malaria/ filaria department and they could not have been granted the pay-scale of supervisors. This argument has to be stated only to be rejected in view of the clear finding of fact recorded by the Tribunal to the effect that the employees had actually been working as supervisors. The Tribunal has also considered the fact that the other similarly situated employees were granted the pay-scale of the supervisors by award or in terms of the resolution of the Standing Committee of the petitioner dated 22.8.1991 settling the grievance of the petitioner in Special Civil Application No.7281 of 1988. It is true that the pay-scale of Rs.950-1500 was resolved to be granted to superior field workers by the said resolution. But the learned counsel for the petitioner has failed to show as to how any other pay-scale and not the same pay-scale was applicable to the supervisors. On the contrary a judgment of this Court in Special Civil Application No.509 of 1995 filed by this very petitioner is relied upon on behalf of the respondent; wherein a labourer actually performing the duty of supervisor was granted the pay-scale of Rs.950-1500 by an award of the Industrial Tribunal and the same was upheld. Considering the facts in each of these cases and the finding of facts recorded by the Tribunal, we have no hesitation in holding that the employees concerned are entitled as supervisors to the pay-scale of Rs.950-1500 with effect from such dates as are fixed by the Tribunal in the respective awards and orders. The Tribunal has acted in lawful exercise of its jurisdiction and made the impugned award on the basis of the material on record warranting no interference by this Court.

8. The learned counsel for the petitioner has made efforts to point out the original terms of appointments, initial pay-scales and the difference in length of service of the employees concerned and tried to emphasis that they have to be classified separately from the other supervisors and field workers in the malaria/ filaria department. It is difficult to accede to such arguments particularly in view of the observations of the Hon'ble Supreme Court, albeit in a different context, in the case of L.I.C. OF INDIA v. CONSUMER EDUCATION AND RESEARCH CENTRE (AIR 1995 SC 1811) as under:-

> "The doctrine of classification is only a subsidiary rule evolved by the Courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or

> anxious or sustained attempt to discover some basis for classification may gradually and imperceptly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Cosntitution."

The crux of the matter is that all these workmen actually worked as supervisors to whom revised pay scale of Rs.950-1500 was clearly admissible and was, therefore, rightly granted on the principle of equal pay for equal work.

9. In the result, these petitions fail. Rule is discharged in each of them with no order as to costs.

(KMG Thilake)
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